

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

## **ORDER ON PENDING MOTIONS**

- 1.** On March 3, 2021, Magistrate Judge Rich issued his Report of Final Pretrial Conference and Order (ECF No. 142) setting this case for bench trial in April and denying the plaintiff's request for a COVID-related delay and for a trial date certain. At the time, the Court expected trials and other in-person hearings to begin generally in April.

- 2.** On March 12, 2021, Chief Judge Levy issued District of Maine General Order 2021-4, which altered the Court's re-opening schedule. Now civil bench trials will take place in April only "if, on motion of a party or on the Court's own initiative, the presiding Judge finds that, in the interests of justice, an immediate in-person hearing or non-jury trial is necessary." Section B.1.a. No such motion or finding has occurred in this case and it is therefore subject to Section B.1.b, which says that non-jury trials will be available starting June 1, 2021.

- 3.** I am not in a position to grant a date certain for this bench trial. The pandemic-created backlog of pending criminal cases must take precedence for any available courtroom hearing and trial days for obvious reasons. If the

parties desire a date certain, they should consent to trial before the Magistrate Judge who may be able to accommodate them if a courtroom is available. Otherwise, the case will be on a trailing list for June. The plaintiff's Objection to Report of Final Pretrial Conference and Order (ECF No. 147) is accordingly **OVERRULED**.

**4.** The defendant's Motion in Limine (ECF No. 144) is **DENIED**. It appears to be largely a motion for judgment as a matter of law, not a motion in limine to facilitate the trial. To the extent it is a motion to exclude evidence, it is **DENIED WITHOUT PREJUDICE** to re-raising it at trial. Evidentiary rulings in state court on different causes of action do not control my evidentiary rulings; I will deal with the issues as appropriate under the Federal Rules of Evidence in this federal case.

**5.** The defendant's motion to exclude (ECF No. 136) is **DENIED**. The issues in this federal case are different from the issues that the state court dealt with. Evidentiary rulings will be based on the Federal Rules of Evidence and the claims asserted in this federal case.

**6.** It is apparent that the parties are unable to resolve any of their disagreements, including how the case should be tried. It will be necessary simply to try the case, and for the presiding judge to deal with the evidentiary conflicts as they arise at trial.

**So ORDERED.**

**DATED THIS 25<sup>TH</sup> DAY OF MARCH, 2021**

/S/D. BROCK HORNBY

**D. BROCK HORNBY**

**UNITED STATES DISTRICT JUDGE**